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JAN 05 2009

**OFFICE OF PETITIONS**

In re Application of :  
Vogelsang et al. : DECISION ON PETITION  
Application No. 10/527,262 :  
Filed: October 4, 2005 :  
Attorney Docket No. WW030USU :

This is a decision on the PETITION FOR REVIVAL OF PATENT APPLICATION ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed August 20, 2008. Given the arguments on petition, this petition is being treated as a no-fee petition under 37 CFR 1.181(a) to withdraw the holding of abandonment<sup>1</sup>.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed September 4, 2007. This Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). No reply considered filed and no extension of time obtained, the application became abandoned effective December 5, 2007. A courtesy Notice of Abandonment was mailed on May 5, 2008.

The petition reveals that on filing of a response to the non-final Office action the application number was misidentified. A review of the record of the misidentified application confirms that the response as petitioner maintains it was filed on December 4, 2007 was, in fact, filed with the wrong application

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<sup>1</sup> Once consideration of the petition under 37 CFR 1.137(b) is undertaken, the fee is not refundable. Accordingly, petitioners may wish to consider filing a (no-fee) petition under 37 CFR 1.181 solely or in the alternative for relief rather than filing a petition under 37 CFR 1.137(b) and offering arguments for refund of that fee.

number. Further investigation reveals that the response with a date of receipt of December 7, 2007, and a certificate of mailing pursuant to 37 CFR § 1.8 dated December 4, 2007, was entered in the misidentified application. This has been corrected. The response filed December 7, 2007, has been "moved" from the electronic record of the incorrectly identified application to the record of the instant application. Moreover, given the certificate of mailing, the response is considered timely filed.

In view thereof, the notice of abandonment mailed May 5, 2008, and the holding of abandonment are hereby **WITHDRAWN**.

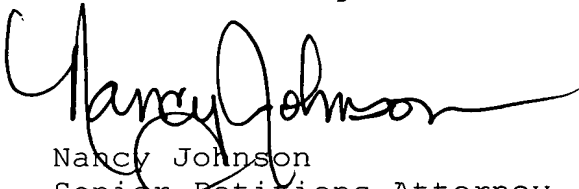
The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Since consideration of the petition under 37 CFR 1.137(b) is unnecessary, no fee for such consideration is required. The fee is being refunded to Deposit Account No. 01-0467, as authorized.

Technology Center AU 3683 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and for the examiner to consider the response timely filed on December 7, 2007 (certificate of mailing dated December 4, 2007).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a stylized, flowing script.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions